

SECOND REGULAR SESSION

SENATE BILL NO. 1306

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR NODLER.

Read 1st time February 25, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4754S.01I

AN ACT

To repeal sections 444.762, 444.765, 444.767, 444.770, and 444.787, RSMo, and to enact in lieu thereof five new sections relating to environmental regulation, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 444.762, 444.765, 444.767, 444.770, and 444.787, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 444.762, 444.765, 444.767, 444.770, and 444.787, to read as follows:

444.762. It is hereby declared to be the policy of this state to strike a balance between surface mining of minerals and reclamation of land subjected to surface disturbance by surface mining, as contemporaneously as possible, and for the conservation of land, and thereby to preserve natural resources, to encourage the planting of forests, to advance the seeding of grasses and legumes for grazing purposes and crops for harvest, to aid in the protection of wildlife and aquatic resources, to establish recreational, home and industrial sites, to protect and perpetuate the taxable value of property, and to protect and promote the health, safety and general welfare of the people of this state. **Nothing in this policy shall be construed to declare the purpose of the Land Reclamation Act as regulation of the excavation of minerals or fill dirt for the purpose of construction of recreational, home, commercial, and industrial sites at the site of the excavation, as unrelated to surface mining or reclamation of land subsequent to the surface mining of minerals.**

444.765. Wherever used or referred to in sections 444.760 to 444.790, unless a different meaning clearly appears from the context, the following terms mean:

(1) "Affected land", the pit area or area from which overburden shall have been removed, or upon which overburden has been deposited after September 28, 1971. When mining is conducted underground, affected land means any excavation or removal of overburden required to create access to mine openings, except that areas of disturbance

encompassed by the actual underground openings for air shafts, portals, adits and haul roads in addition to disturbances within fifty feet of any openings for haul roads, portals or adits shall not be considered affected land. Sites which exceed the excluded areas by more than one acre for underground mining operations shall obtain a permit for the total extent of affected lands with no exclusions as required under sections 444.760 to 444.790;

(2) "Commercial purpose", the purpose of extracting minerals for their value in sales to other persons;

(3) "Commission", the land reclamation commission in the department of natural resources;

(4) "Construction", construction, erection, alteration, maintenance, or repair of any building, structure, highway, road, bridge, viaduct, water or sewer line, pipeline or utility line, and demolition, excavation, land clearance, and moving of minerals or fill dirt in connection therewith;

[(3)] (5) "Director", the staff director of the land reclamation commission;

(6) "Excavation", any operation in which earth, minerals, or other material in or on the ground is moved, removed, or otherwise displaced for purposes of construction at the site of excavation, by means of any tools, equipment, or explosives and includes, but is not limited to, backfilling, grading, trenching, digging, ditching, drilling, well-drilling, auguring, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, demolition of structures, and the use of high-velocity air to disintegrate and suction to remove earth and other materials;

(7) "Fill dirt", material removed from its natural location through mining or construction activity, which is a mixture of unconsolidated earthy material, which may include some minerals, and which is used to fill, raise, or level the surface of the ground at the site of disposition, which may be at the site it was removed or on other property, and which is not processed to extract mineral components of the mixture. Backfill material for use in completing reclamation is not included in this definition;

(8) "Land improvement", work performed by or for a public or private owner or leasor of real property for purposes of improving the suitability of the property for construction at an undetermined future date, where specific plans for construction do not currently exist;

[(4)] (9) "Mineral", a constituent of the earth in a solid state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form as a chemical, an energy source, or raw material for manufacturing or construction material. For the purposes of this section, this definition includes barite, tar sands, and oil shales, but does not include iron, lead, zinc, gold, silver, coal, surface or subsurface water, fill dirt, natural

oil or gas together with other chemicals recovered therewith;

(10) "Mining", the removal of overburden and extraction of underlying minerals or the extraction of minerals from exposed natural deposits for a commercial purpose, as defined by this section;

[(5)] **(11) "Operator", any person, firm or corporation engaged in and controlling a surface mining operation;**

[(6)] **(12) "Overburden", all of the earth and other materials which lie above natural deposits of minerals; and also means such earth and other materials disturbed from their natural state in the process of surface mining other than what is defined in subdivision [(4)] (9) of this section;**

[(7)] **(13) "Peak", a projecting point of overburden created in the surface mining process;**

[(8)] **(14) "Pit", the place where minerals are being or have been mined by surface mining;**

(15) "Public entity", the state of Missouri or any officer, official, authority, board, or commission of the state and any county, city, or other political subdivision thereof, or any institution supported in whole or in part by public funds;

(16) "Quarry", any open pit or land disturbance whose primary business purpose is the commercial surface mining of minerals for purposes of being processed and sold to public entities or private persons. A quarry operation includes, but is not limited to, blasting, mining, screening, sorting, crushing, milling, stockpiling, and weight scales or other means of measuring the quantity of minerals sold;

[(9)] **(17) "Refuse", all waste material directly connected with the cleaning and preparation of substance mined by surface mining;**

[(10)] **(18) "Ridge", a lengthened elevation of overburden created in the surface mining process;**

[(11)] **(19) "Site" or "mining site", any location or group of associated locations where minerals are being surface mined by the same operator;**

[(12)] **(20) "Surface mining", the mining of minerals for commercial purposes by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed, and shall include mining of exposed natural deposits of such minerals over which no overburden lies and, after August 28, 1990, the surface effects of underground mining operations for such minerals. For purposes of the provisions of sections 444.762 to 444.787, surface mining shall not be construed to mean excavations to move minerals or fill dirt within the confines of the real property where the excavation occurs or to remove minerals or fill dirt from the real**

property in preparation for construction.

444.767. 1. The commission may:

(1) Adopt and promulgate rules and regulations pursuant to section 444.530 and chapter 536, RSMo, respecting the administration of sections 444.760 to 444.790 and in conformity therewith;

(2) Encourage and conduct investigation, research, experiments and demonstrations, and collect and disseminate information relating to strip mining and reclamation and conservation of lands and waters affected by strip mining;

(3) Examine and pass on all applications and plans and specifications submitted by the operator for the method of operation and for the reclamation and conservation of the area of land affected by the operation;

(4) Make investigations and inspections which are necessary to ensure compliance with the provisions of sections 444.760 to 444.790;

(5) Conduct hearings pursuant to sections 444.760 to 444.790 and may administer oaths or affirmations and subpoena witnesses to the inquiry;

(6) Order, after hearing, the revocation of any permit and to cease and desist operations for failure to comply with any of the provisions of sections 444.760 to 444.790 or any corrective order of the commission;

(7) Order forfeiture of any bond for failure to comply with any provisions of sections 444.760 to 444.790 or any corrective order of the commission or other order of the commission;

(8) Cause to be instituted in any court of competent jurisdiction legal proceedings for injunction or other appropriate relief to enforce the provisions of sections 444.760 to 444.790 and any order of the commission promulgated thereunder;

(9) Retain, employ, provide for, and compensate, within the limits of appropriations made for that purpose, such consultants, assistants, deputies, clerks, and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 444.760 to 444.790 and prescribe the times at which they shall be appointed and their powers and duties;

(10) Study and develop plans for the reclamation of lands that have been strip mined prior to September 28, 1971;

(11) Accept, receive and administer grants or other funds or gifts from public and private agencies and individuals, including the federal government, for the purpose of carrying out any of the functions of sections 444.760 to 444.790, including the reclamation of lands strip mined prior to August 28, 1990. The commission may promulgate such rules and regulations or enter into such contracts as it may deem necessary for carrying out the provisions of this subdivision;

(12) Budget and receive duly appropriated moneys for expenditures to carry out the

provisions and purposes of sections 444.760 to 444.790;

(13) Prepare and file a biennial report with the governor and members of the general assembly;

(14) Order, after hearing, an operator to adopt such corrective measures as are necessary to comply with the provisions of sections 444.760 to 444.790.

2. The commission shall have no authority under the provisions of sections 444.762 to 444.787 to regulate the excavation of minerals or fill dirt for the purposes of construction at the site of excavation, as unrelated to reclamation of land subsequent to the surface mining of minerals.

3. Neither shall the commission have the authority to regulate commerce in the sale of minerals or to implement or enforce regulations or policies for the purpose of protecting or establishing markets for one or more operators of surface mining operations.

4. The powers authorized by this section shall be utilized to promote the reclamation of land subjected to disturbance by surface mining for purposes of conservation of land for recreational, residential, commercial, industrial, or other beneficial use subsequent to mining and to promote and protect the health, safety, and general welfare of the people of this state in relation to surface mining.

444.770. 1. It shall be unlawful for any operator to engage in surface mining without first obtaining from the commission a permit to do so, in such form as is hereinafter provided, including any operator involved in any gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons.

2. Sections 444.760 to 444.790 shall apply only to those areas which are opened on or after January 1, 1972, or to the extended portion of affected areas extended after that date. The effective date of this section for minerals not previously covered under the provisions of sections 444.760 to 444.790 shall be August 28, 1990.

3. All surface mining operations where land is affected after September 28, 1971, which are under the control of any government agency whose regulations are equal to or greater than those imposed by section 444.774, are not subject to the further provisions of sections 444.760 to 444.790, except that such operations shall be registered with the land reclamation commission.

4. Any portion of a surface mining operation which is subject to the provisions of sections 260.200 to 260.245, RSMo, and the regulations promulgated thereunder, shall not be subject to the provisions of sections 444.760 to 444.790, and any bonds or portions thereof applicable to such operations shall be promptly released by the commission, and the associated permits canceled by the commission upon presentation to it of satisfactory evidence that the operator has received a permit pursuant to section 260.205, RSMo, and the regulations promulgated thereunder. Any land reclamation bond associated with such

released permits shall be retained by the commission until presentation to the commission of satisfactory evidence that:

(1) The operator has complied with sections 260.226 and 260.227, RSMo, and the regulations promulgated thereunder, pertaining to closure and postclosure plans and financial assurance instruments; and

(2) The operator has commenced operation of the solid waste disposal area or sanitary landfill as those terms are defined in chapter 260, RSMo.

5. Notwithstanding the provisions of subsection 1 of this section, any political subdivision which uses its own personnel and equipment or any private individual for personal use may conduct in-stream gravel operations without obtaining from the commission a permit to conduct such an activity.

6. Notwithstanding any commission rule, policy, or interpretation to the contrary, no public entity, private person, or contractor or subcontractor to such public entity or private person shall be required to obtain a permit under this section for the purpose of moving minerals or fill dirt within the confines of real property where excavation occurs or to remove minerals or fill dirt from the real property as incidental to the primary purpose of construction at the site of excavation. It shall be conclusively presumed that excavations are for the purposes of construction if:

(1) Excavation, moving, or removing of minerals or fill dirt is performed by the public entity, private person, or a contractor to such public entity or private person or by a subcontractor, pursuant to engineering plans and specifications for construction on the real property, which were prepared by an architect, professional engineer, or landscape architect licensed pursuant to chapter 327, RSMo; or

(2) There is a written contract between a contractor and a public entity or private person or between a contractor and subcontractor, which establishes dates for completion of the work or portions of the work, specifies the terms of payment for work, and requires the excavation, moving, or removing of minerals or fill dirt for purposes of construction.

7. Any private person, leasor, public entity, contractor, or subcontractor engaged in land improvement involving the displacement, moving, or removal of minerals and fill dirt may or may not be required to obtain a surface mining permit pursuant to a determination by the commission as to whether activity on the real property constitutes surface mining.

(1) It shall be conclusively presumed that such activities are for the purpose of mining if:

(a) The real property has been designated as a surface mine by the federal

Mine Safety and Health Administration; or

(b) Minerals from the property are sold to other persons on a frequent ongoing basis as demonstrated by financial records of the property owner or purchasers of minerals; or

(c) A pit, peak, or ridge as defined in land reclamation laws persists at the property without the property being leveled or filled as consistent with plans, drawings, or maps for land improvement and which endangers the health, safety, or welfare of the general public or constitutes a public nuisance;

(2) It shall be conclusively presumed that such activities are not for the purposes of mining and do not require a permit if:

(a) The real property has been approved by a county, city, or other recognized planning and zoning authority for designated use other than as a quarry; or

(b) Surety bonds or other financial assurances have been provided by the owner of the property as required by a city or county for purposes of development; or

(c) Performance or payment bonds have been provided by a contractor as required by a public entity pursuant to section 107.170, RSMo; or

(d) The land improvement is for the purpose of preparing the real property for tilling of the soil and planting of crops or other agricultural purposes;

(3) The commission shall promulgate rules further defining when land improvement requires or does not require a surface mining permit. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

8. If the director or staff determines that a surface mining permit is required for real property which is purported to be for purposes of construction or land improvement not requiring a surface mining permit pursuant to this section, such determination shall be communicated to the owner of the property by letter stating the reasons for such determination. Upon request of the person receiving the letter, an informal conference shall be scheduled with the director within fifteen calendar days to discuss the determination. Following the informal

conference, the director shall issue a written determination regarding his findings of fact no later than fifteen calendar days after the date of the conference. If the director agrees that a surface mining permit is required and the person disagrees with that decision, upon written request, the person may request a hearing before the commission at its next regular meeting. The commission shall issue a written determination as to whether a surface mining permit is required under Missouri law within thirty calendar days after the hearing. The written determination may be appealed as provided under this chapter. The burden of proof to establish that a permit is required shall be on the director and the commission.

444.787. 1. The commission shall investigate surface mining operations in the state of Missouri. If the investigations show that surface mining is being or is going to be conducted without a permit in violation of sections 444.760 to 444.790 or in violation of any revocation order, and the commission has not issued a variance, the commission shall request the attorney general to file suit in the name of the state of Missouri for an injunction and civil penalties not to exceed one thousand dollars per day for each day, or part thereof, the violation has occurred. Suit may be filed either in the county where the violation occurs or in Cole County.

2. If the investigation shows that a surface mining operation for which a permit has been issued is being conducted contrary to or in violation of any provision of sections 444.760 to 444.790 or any rule or regulation promulgated by the commission or any condition imposed on the permit or any condition of the bond, the director may by conference, conciliation and persuasion endeavor to eliminate the violation. If the violation is not eliminated, the director shall provide to the operator by registered mail a notice describing the nature of the violation, corrective measures to be taken to abate the violation, and the time period for abatement. Within fifteen days of receipt of this notice the operator may request an informal conference with the director to contest the notice. The director may modify, vacate or enforce the notice and shall provide notice to the operator of his action within thirty days of the informal conference. If the operator fails to comply with the notice, as amended by the director, in the time prescribed within the notice, the director shall file a formal complaint with the commission for suspension or revocation of the permit, and for forfeiture of bond, or for appropriate corrective measures. When the director files a formal complaint, the commission shall cause to have issued and served upon the person complained against a written notice together with a copy of the formal complaint, which shall specify the provision of sections 444.760 to 444.790 or the rule or regulation or the condition of the permit or of the bond of which the person is alleged to be in violation, a statement of the manner in, and the extent to which, the person is alleged to be in violation. The person complained against may, within fifteen days of receipt of the complaint, request a hearing before the commission. Such hearing shall be conducted in accordance with the provisions of section

444.789.

3. After due consideration of the hearing record, or upon failure of the operator to request a hearing by the date specified in the complaint, the commission shall issue and enter such final order and make such final determination as it shall deem appropriate under the circumstances. Included in such order and determination may be the revocation of any permit and to cease and desist operations. The commission shall immediately notify the respondent of its decision in writing by certified mail.

4. Any final order or determination or other final action by the commission shall be approved in writing by at least four members of the commission. The commission shall not issue any permit to any person who has had a permit revoked until the violation that caused the revocation is corrected to the satisfaction of the commission. Any final order of the commission can be appealed in accordance with chapter 536, RSMo.

5. If the suit filed pursuant to subsection 1 of this section alleges that the violation of operating without a permit constitutes fraud in purporting to be exempted by the provisions of sections 444.762 to 444.787 for construction or land improvement, and the court imposed civil penalties for a violation, additional penalties may be levied at the discretion of the court for up to double the cumulative total of penalties authorized by subsection 1 of this section.

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